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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1202nd MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 4 November 1992, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the first part of the meeting appears as document CCPR/C/SR.1202.

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1. Mr. WENNERGREN said it was gratifying that members of the Committee were being given an opportunity to exchange views with the representatives of the authorities of the Federal Republic of Yugoslavia, and hoped that the dialogue would help to promote respect for human rights both in the territory of the Republic as well as in neighbouring countries.

2. One of the basic questions on which he requested the delegation to furnish further details was how the Government of the Republic had, from the standpoint of international law, viewed its intervention in territories not under its jurisdiction, since such intervention was obviously contrary to the principles proclaimed in the Covenant. He therefore wondered whether the Government had declared war officially or had made any other declaration recognized under international law justifying use of its land and air forces to penetrate the territory of third States. Furthermore, he would appreciate clarification of the situation in Kosovo, for when it had examined the last periodic report of the former Yugoslavia, the Committee had already noted that many human rights violations, such as arbitrary arrests and detention, summary executions, the ill-treatment of detainees and measures intended to hamper the activities of political opponents, were being committed in that province. Since then, it appeared that the situation had deteriorated even further under Serbian dictatorship, which was oppressing the population of Albanian origin with impunity. He would like to know whether there were any reasons why the situation was developing along those lines and whether the Government of the Federal Republic intended to take steps to reinstate a legitimate Government and put an end to the excesses being perpetrated in order to prevent the alarming situation of the people who were seeking asylum abroad from deteriorating further.

3. Mr. AGUILAR URBINA said that he too was gratified by the presence in the Committee of the delegation of the Federal Republic of Yugoslavia. However, he could not conceal his indignation at the genocide taking place; it was inconceivable that that sort of thing was happening at the end of the twentieth century and in a civilized world. Information must be provided on those actually responsible for the atrocities being committed which, as Mrs. Higgins had observed, suggested the holocaust. The report submitted by the Government and the oral presentation by the delegation simply referred to isolated cases of abuse of authority, or omissions and negligence on the part of the authorities. It was surprising, to say the least, that such isolated acts had resulted in the displacement of millions of persons, as well as tens of thousands of deaths and disappearances in a few months. In the circumstances, the Committee noted that the report quite obviously contained nothing but inadmissibly false statements. Using the example of so-called bands of pillagers who allegedly crossed frontiers to engage in acts of sabotage, the Committee was justified in wondering how mere groups of criminals could control 60 to 70 per cent of the territory of Bosnia and Herzegovina. Moreover, the report indicated that the situation in the former Yugoslavia was in part due to the fact that the country had for over half a century remained under an authoritarian and totalitarian regime. Yet it was common knowledge that, under that regime, civilians were not allowed to possess weapons whereas it appeared that the Serbian population, particularly in Bosnia and Herzegovina, possessed a complete military arsenal which had formerly belonged to the Yugoslav Federal Army and which it used with the complicity of the authorities. Similarly, according to the report,

only 145 persons had been charged with illegally carrying weapons in the Ruma area, and in the district of Plevlja 500 weapons, together with ammunition and explosives, had been confiscated. Those figures, which were ridiculous in the context of the conquest of vast tracts of territory, could hardly explain the number of victims of armed attacks and there was no doubt that the Government of the Federal Republic of Yugoslavia was being manipulated by certain elements.

4. The Government claimed that there were no concentration camps in the territory under its control; rather they were true extermination camps where the guiding principle was that of the final solution thought up by Hitler, and despite the Government's denials, an ethnic cleansing policy was obviously being pursued as was clear from all newspaper reports and even television commentaries. Lastly, as regards the situation in Kosovo where the policy of genocide directed against Albanians had been initiated, he would like to know who would be held responsible for supplying weapons, munitions and military vehicles in that province.

5. Mr. LALLAH said that he too was forced to conclude that the actual situation, as described in reports from many reliable sources, was very different from that depicted in the report of the Federal Republic of Yugoslavia. History would no doubt reveal the exact nature of the situation, but at the present stage the delegation could hardly expect the Committee to be too credulous. Responsibility for the state of war must necessarily be shouldered by the leaders of the country, and by all those who had been instrumental in applying the policy of the Federal Republic of Yugoslavia. Since the Yugoslav delegation was prepared to cooperate with the Committee, it was to be hoped that in future the dialogue would be realistic and concentrate on facts recognized by all.

6. Mr. OBRADOVIC (Federal Republic of Yugoslavia (Serbia and Montenegro)), replying to the questions raised by members of the Committee, said that the Federal Government had dealt only with the situation in the territory of the Federal Republic of Yugoslavia, namely, Serbia and Montenegro and, from that point of view, its replies had been made in good faith. Some of the questions put concerned the situation in territories other than that of the Republic, but he would nevertheless endeavour to answer them. He explained that the Federal authorities were also concerned by events in Bosnia and Herzegovina but were unable to influence the situation directly and to conduct investigations of, for example, members of the Federal Army who had remained in Bosnia when military forces had been withdrawn from the territory. For the moment, those matters were of a delicate nature and should be examined with a clear mind once the conflict was over. He also explained that the Serbian Republic had never been recognized by the Federal Government, which had considered that the area of Bosnia where the Serbs were in a majority was an integral part of the Republic of Bosnia and Herzegovina. It was doing its best to avoid any contact with the so-called Serbian Government in Bosnia, but that did not mean that it was at the origin of the atrocities which were being committed in Bosnian territory.

7. The Federal Government recognized that the State was internationally responsible not only for leaders and officials, but also for any individual who acted on its behalf. It was trying to investigate those matters and if it

remained in office all individuals would assuredly be held responsible for their acts from the beginning of the conflict. However, the law could not be enforced without political will and the material means to do so, and that raised extremely complex problems in the present Yugoslavia, particularly in view of the involved legal situation created by the problem of succession. Nevertheless, the Government was firmly determined to bring to justice all persons alleged to have committed war crimes or crimes against humanity in accordance with its criminal legislation, which made all such offences punishable.

8. As for the reason why people of various nationalities who had previously lived in harmony in the former Yugoslavia had suddenly displayed such hatred towards one another, he explained that, under the previous regime, politicians had brazenly embarked upon campaigns of fomenting hatred, using the media for that purpose. The passions of the people were now unbridled and it was very difficult to bring them to reason. The Federal Government was doing what it could to restore calm but basically it lacked the means to do so. What had to be done was not to censure the media but to stamp out the scourge - a task that was also connected with the political situation.

9. Replying to Mr. Herndl's question, he said that a general amnesty would be granted for all offences connected with the armed conflict. For example, it would apply to all persons who had been accused of having deserted from the Federal Army or failing to heed military call-up orders, of having participated in mutinies or failing to obey the orders of the military authorities. It went without saying that amnesty would not be granted to persons found guilty of war crimes or crimes against humanity, namely, serious violations of the Geneva Conventions and their additional Protocols.

10. As regards the conflict itself, he said that it had started as a civil war that had mushroomed into an international conflict and that, in the circumstances, application of the rules of humanitarian law and the establishment of responsibility raised extremely complex problems which it was to be hoped would be resolved in the framework of the International Conference on the Former Yugoslavia. Mr. Herndl had also asked about the existence of concentration or extermination camps in the territory of the Republic. In that connection, the Yugoslav delegation emphasized that even Mr. Mazowiecki, the Special Rapporteur of the Commission on Human Rights, had observed that there was no camp of that nature in the territory of the Federal Republic, and that information was surely reliable. If, however, human rights had been violated in prison camps, the competent bodies of the Public Prosecutor's Office had in their possession all relevant information needed to investigate the facts and punish those responsible. As for the situation in Kosovo, where coexistence between Albanians and Serbs inevitably led to human rights violations, he said that certain members of the police had already been charged for violating the Law on the maintenance of order, but that what they had done could certainly not come under the heading of mass killings or systematic torture.

11. Replying to the questions put by Mrs. Chanet, he explained that paramilitary groups had formed themselves at the beginning of the civil war in those parts of the territory of the former Yugoslavia where Serbs had been in a majority and that those groups, wielding a certain amount of authority,

had in practice assumed the functions of the police or the army. However, they were also active in the territories beyond the control of the Federal Government, which refrained from intervening to restore order there since the political situation prevented it from doing so even though, like the public at large, it was aware of the atrocities being committed there. With regard to the situation in Vojvodina, he said that a census had been carried out to determine as far as possible the number of young persons who had left the area to evade their military obligations and who would be covered by the general amnesty law. Moreover, steps had been taken to slow down the exodus of the civilian population to Croatia and to encourage people to stay where they were by assuring them that they would be duly protected.

12. To Mr. Prado Vallejo who had raised the question of the right to self-determination, he pointed out that international law contained no provisions specifying how that right should be exercised and that, during the post-war period, far from using peaceful means, peoples had acquired their right to self-determination through armed conflict. Nevertheless, the Federal Government respected that right, as was proved by its recognition of the Republic of Slovenia as a sovereign State. He regretted the reference in the report to the "dictatorial regimes" of Latin America; there had no doubt been a misunderstanding about the type of situations the Committee had in mind and the best course would be to delete any reference to the situation in Latin America from the report.

13. He personally opposed censure and favoured the complete freedom of the press. However, television in particular could be dangerous if programmes were likely to stir up ethnic hatred; that explained the existence of a Media Monitoring Committee, on which all the country's political trends and shades of opinion were represented.

14. Referring to the concern expressed by Mr. El Shafei concerning respect for frontiers, he said it was difficult to establish border facilities rapidly in the new context in which frontiers had been established when there had been none in the country during the previous 70 years. Demarcation lines were not always accurate and it was difficult, for example, between Montenegro and Bosnia and Herzegovina, in a mountainous region unfamiliar to the new frontier guards, to monitor the comings and goings of inhabitants who were fully acquainted with the area. On the other hand, it was easy to exercise control over the frontier between Croatia and Serbia since the area was flat.

15. Referring to Mr. Müllerson's question about the conflict of competence, he said it was true that the competence of the Federal Government was relatively limited and that, for example, the Federal police could not intervene directly in areas where fighting was going on. Nor could the Federal authorities act directly to protect human rights. However, the Constitution would probably be amended after the elections of December 1993 to give the Federal Government a free hand in the protection of human rights.

16. On the question of ethnic cleansing, about which Mrs. Higgins had expressed concern, he reaffirmed that there was absolutely no official policy aimed at expelling people from areas in which they lived, and that public opinion would strongly oppose a policy of that nature. The only acts of that kind that might have taken place before the present Federal Government had

assumed office must have been due to the negligence of the local authorities. In Vojvodina, for example, the Minister of the Interior had instituted about 15 legal proceedings against police officers alleged to have connived with advocates of an ethnic cleansing policy.

17. Referring to the concern expressed by Mr. Wennergren, he emphasized that the Federal army was gradually withdrawing from the territories it occupied in connection with the negotiations taking place with the Croatian Government and FORPRONU. As for the application of international law, he expressed the hope that the case of Yugoslavia would offer the international judicial system its first opportunity of dealing with war crimes and crimes against humanity, since it had been unable to do so previously. The situation was extremely complex because it was unknown exactly at what time the internal conflict that resulted in the break-up of Yugoslavia had been transformed into an international conflict. Nevertheless, all parties to the conflict would refer to humanitarian law as proclaimed in the Geneva Conventions but nothing at the present time indicated that the solution would be found rapidly. He observed that, under totalitarian regimes, such as those which had prevailed formerly in Yugoslavia, the concept of human rights was not the same as under other regimes, and it was that point which the Federal Government had wanted to emphasize in its report.

18. The CHAIRMAN thanked the representative of the Federal Government for replying to the questions put to him. He invited members of the Committee to present their final observations on the dialogue established with the delegation.

19. Mr. MÜLLERSON said that his concern had not been allayed despite the efforts made by the Yugoslav delegation to prove that there were no concentration camps or ethnic cleansing policy in Serbia and Montenegro. The delegation had also tried to prove that most human rights violations were committed outside the territory of the Federal Republic, but it had been careful not to mention that the Federal authorities were nevertheless playing a role in those violations and even encouraging high-ranking authorities to commit crimes against humanity, particularly in Serbia. It was to be hoped that the Federal authorities would do everything necessary to correct that extremely worrying situation and that the Committee's consideration of the report would bring hope to all those who, in the Federal Republic of Yugoslavia, were trying to restore public order and protect human rights.

20. Mr. PRADO VALLEJO commended Mr. Obradovic on the considerable efforts he had made to defend his country's position even if it was in point of fact indefensible. It was common knowledge that in the Federal Republic of Yugoslavia all rights proclaimed in the Covenant were systematically violated but that the State was evading its responsibility and refusing to fulfil its foremost obligation, which was to seek out the guilty and bring them to justice so as to prevent a repetition of the crimes of which they were guilty. Internationally, the Federal Government had embarked upon the conquest of territories through an ethnic cleansing policy although it knew that all international bodies had stated that the territories conquered in that way would never be recognized as part of the Federal Republic of Yugoslavia.

21. He had been extremely surprised to hear the Yugoslav representative affirm that the authorities of his country knew nothing of what the Serbs were doing in neighbouring territories, whereas it was enough simply to watch television, listen to the radio or read the newspapers to know exactly what was going on. The Committee could not be taken in by such affirmations. No country could claim it knew nothing about the difficulties it faced and thereby try to evade the international obligations it had assumed under the Covenant. Honesty required that the Federal Government should acknowledge that it was pursuing an ethnic cleansing policy in its own interests, as was clear from all reports which indicated that genocide was actually taking place. The Yugoslav delegation had itself stated that the Serbs were heavily armed, but had not specified who was supplying them with arms and who was helping them financially to maintain their military arsenal. It had also stated that the Federal Government had no control over the situation. Yet surely the Federal authorities could use their considerable influence over the leaders of the Republic of Serbia to get them to put an end to the genocide. All international bodies and above all the Security Council had called for firm measures to put an end to all those horrendous acts, which not only affected the prestige of the Yugoslav people from the standpoint of the international community but were also an affront to the universal conscience of mankind.

22. Mrs. HIGGINS said that she too was still very concerned by the situation in the former Yugoslavia despite the efforts made by Mr. Obradovic to appear reassuring. The Yugoslav delegation had simply reaffirmed that no deliberate ethnic cleansing policy had been or was being pursued, that the replies given in the report related only to the Federal territory and that, therefore, the Government had not sought to evade the questions asked, that account had to be taken of the fact that the new Government had been in office only since July 1992, and that certain problems arose concerning relations between certain elements of the Serbian Government and the Federal Government.

23. As regards the question of jurisdiction, the Committee had always maintained that States were responsible for ensuring respect for the human rights proclaimed in the Covenant when their representatives were implicated and when their acts affected human beings, even outside their national territory. Its practice in the matter was quite clear. The only State that had questioned that interpretation of the concept of jurisdiction had been Iraq following its invasion of Kuwait.

24. The Federal Government had still not taken sufficiently energetic measures to put an end to ethnic cleansing, either in the territory under its control or beyond. The delegation had referred to the existence of hidden links between the Federal Government and the Serbs, particularly in Bosnia, and said that the matter would be investigated. In her opinion the time had come to take firm measures to investigate the events that had taken place and for which the Federal Government was directly or indirectly responsible. In her opinion serious violations of articles 6, 7, 9, 10 and 20 of the Covenant had certainly been committed.

25. Mr. LALLAH said that Mr. Obradovic had shown considerable talent in replying to the many questions put by the Committee which had not, however, been convinced by the replies given. It was his understanding, according to

the oral presentation, that tens of thousands of persons in the Federal Republic were armed. The Yugoslav delegation could correct him if he was wrong but if the information was correct a number of questions arose: why were all those persons armed? What were their targets? Why had those targets been selected? And how were the authorities reacting? He associated himself fully with the observations presented by Mrs. Higgins on the question of the responsibility of the State.

26. He had no doubt that the dialogue established in the Committee would have a number of positive results. He hoped that the Federal Government would reflect about the real difficulties created by the Federal structure and about possible solutions, providing it had the political will to put an end to the present situation. It was difficult to know what specific measures would be taken in application of the Covenant, since they depended essentially on the good faith and sincere commitment of States to fulfil their obligations, but he hoped that the Yugoslav delegation would at least transmit the Committee's message to the Government of its country.

27. Mr. HERNDL said he had noted with satisfaction that the Federal Government had undertaken to assume international responsibility for the events that had taken place outside its own territory. He had also noted the existence of hidden links with Serbian forces and authorities outside the Federal territory, and considered it was high time for the Federal Government to take energetic measures to put an end to that kind of cooperation which implied approval of a situation characterized by serious human rights violations and represented a real danger for the future of the peoples living in the territory of the former Yugoslavia, including the population of Serbia and Montenegro.

28. The Federal Government should define its attitude to the Covenant and indicate the legal basis on which it intended to apply its provisions. It should, in that connection, bear in mind the principle that the application of the Covenant's provisions depended on goodwill, good faith and cooperation between the Governments of States parties. The Committee could only hope that, in future, attitudes would evolve in such a way as to restore to all the inhabitants of the former Yugoslavia their legitimate right to peace and the enjoyment of their fundamental freedoms.

29. Mrs. CHANET thanked Mr. Obradovic for having tried to reply to the questions put by members of the Committee; the exercise had undoubtedly been difficult. Despite all the explanations given, she still found it very difficult to believe, in view of the interests involved and the means used, that in Bosnia and in Herzegovina ordinary demobilized soldiers, badly organized and poorly equipped, had been able to wage the conflict that had been described and by themselves to pursue a systematic ethnic cleansing policy. Furthermore, it seemed obvious that the Federal Republic, which apparently had the situation in hand, could very easily repudiate that kind of policy, take a strong stand against the excesses committed in the name of Serbian nationalism, mobilize the population to oppose any incitement to ethnic hatred, and disassociate itself completely from the various factions that were active outside Federal territory. It was therefore regrettable that the Yugoslav delegation had tried to deny the Federal Government's

responsibility by saying that the events had occurred outside national territory and that it had not indicated precisely the measures that could have been taken to prevent the crimes committed.

30. She hoped that Mr. Obradovic would transmit the Committee's observations to the Yugoslav authorities and thanked him for having agreed to engage in a dialogue with the Committee.

31. Mr. WENNERGREN thanked Mr. Obradovic for his replies, which had demonstrated his thorough knowledge of the situation in the territories of the former Yugoslavia. He had had the impression that the Federal Government was practically powerless compared with the Governments of the Republics of Serbia and Montenegro, which was quite surprising. He was, however, satisfied with the replies given concerning the Federal Government's responsibility under international law, considering the complexity of the situation. His doubts about the situation of the Albanians in Kosovo persisted however, and he wondered whether their right to autonomy in the province of which they had been arbitrarily deprived would be restored in the future. He hoped that the Government of the Federal Republic of Yugoslavia would do everything in its power to put an end to the human rights violations that had been committed in that way.

32. Mr. AGUILAR URBINA also thanked Mr. Obradovic for the replies that he had so skilfully given to the questions put by members of the Committee, despite the fact that what he had had to say was not satisfactory. In particular he doubted whether the Federal Government really controlled the situation in the Federal Republic of Yugoslavia and thought that real power was exercised rather by the leaders of the two constituent States, namely, Serbia and Montenegro. He therefore hoped that the Yugoslav delegation would transmit the observations of members of the Committee to those who actually exercised power.

33. The CHAIRMAN said that the presentation of the report of the Federal Republic of Yugoslavia and the presence of the Yugoslav delegation in the Committee were proof that the Federal Government intended to fulfil its obligations under the Covenant. He regretted, however, that the dialogue had not been more constructive, and that the delegation had refused to comment on all human rights violations - not only those within Federal territory but also those in the territories that were directly or indirectly under its jurisdiction. In that connection he pointed out that, by addressing its questions to the Federal Government, the Committee had clearly had in mind the overall situation in the territory of the former Yugoslavia, and not simply that in the territory of Serbia and Montenegro.

34. The Yugoslav delegation had endeavoured to demonstrate the goodwill of the Federal Government and the Committee could certainly not doubt Mr. Obradovic's honesty but it was surprising that the Government, through its representatives, had stated that it was powerless to react to the events that were taking place beyond its frontiers and was refusing, before the international community, to shoulder any responsibility for policies pursued in the name of the Serbian nation. Even on the domestic level, the Government claimed that it had undertaken to punish those responsible for human rights violations that might have been committed in the past, but it appeared that

no effective investigation had been conducted so far and that no guilty party had been identified. It was therefore high time that the Federal Government demonstrated its goodwill by really taking action and fulfilling its responsibilities so that a situation that was deplored throughout the world could be brought to an end.

35. Mr. OBRADOVIC (Federal Republic of Yugoslavia (Serbia and Montenegro)) thanked all members of the Committee who had wished, in good faith, to contribute to the solution of the extremely complex problems that arose in connection with the implementation of human rights in the Federal Republic of Yugoslavia. He noted, in connection with a point made by Mrs. Chanet, that for 30 or 40 years the Yugoslav army had maintained its military arsenal in Bosnia, and that to a large extent it consisted of Serbian soldiers, most of whom came from Bosnia and Herzegovina and Croatia; that explained why the majority had remained where they were. The Federal Government, for its part, had had no choice but to cashier them.

36. Referring to Mr. Lallah's observation, he emphasized that the Federal Government did not lack political will which, however, had to be buttressed by effective power if the law was to be applied. Moreover, the Federal Government still lacked the means required to fulfil its international obligation to punish persons responsible for violations of humanitarian law. But it did not deny its responsibility. The Yugoslav delegation would duly inform the Federal authorities of the observations made on the subject by the members of the Committee and hoped that the next report would give greater satisfaction.

37. The CHAIRMAN thanked the Yugoslav delegation and said that the Committee had thus completed consideration of the report of the Federal Republic of Yugoslavia (Serbia and Montenegro).

38. The Yugoslav delegation withdrew.

The meeting rose at 8.10 p.m.